



General Assembly

January Session, 2013

Substitute Bill No. 6694



**AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD
WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) (a) For purposes of
2 determining rights to property to be distributed upon the death of a
3 decedent spouse, a child of the decedent spouse, born after the death
4 of the decedent spouse, shall be deemed to have been born in the
5 lifetime of the decedent spouse, and after the execution of all of the
6 decedent spouse's testamentary instruments, if the child or his or her
7 representative proves by clear and convincing evidence that:

8 (1) The decedent spouse executed a written document that: (A)
9 Specifically set forth that his or her genetic material may be used for
10 the posthumous conception of a child, (B) specifically provided his or
11 her spouse with authority to exercise custody, control and use of the
12 genetic material in the event of his or her death, and (C) was signed
13 and dated by the decedent spouse and the surviving spouse; and

14 (2) The child posthumously conceived using the decedent spouse's
15 genetic material was in utero not later than one year after the date of
16 death of the decedent spouse.

17 (b) Upon the death of a decedent spouse who has executed a
18 document described in subsection (a) of this section, the surviving
19 spouse shall ensure that a copy of such document is provided to the

20 fiduciary of the decedent spouse's estate not later than thirty days after
21 the date of the decedent spouse's death.

22 Sec. 2. Subdivision (1) of subsection (a) of section 45a-341 of the
23 general statutes is repealed and the following is substituted in lieu
24 thereof (*Effective October 1, 2013*):

25 (a) (1) An inventory of all the property of every deceased person
26 and insolvent debtor, except real property situated outside the state,
27 duly appraised, shall be made and signed under penalty of false
28 statement by the fiduciary. The inventory shall include any written
29 document provided to the fiduciary by a surviving spouse pursuant to
30 the requirements set forth in section 1 of this act.

31 Sec. 3. (NEW) (*Effective October 1, 2013*) If a claim made on behalf of
32 a child alleges that such child is a beneficiary of a decedent entitled to
33 property under section 1 of this act, any payment or distribution of
34 assets by a fiduciary shall be deemed to have been made in good faith
35 unless the claimant proves that the fiduciary had knowledge of the
36 child's existence at the time of the payment or distribution of the
37 assets.

38 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Except as otherwise
39 provided in subsection (b) of section 45a-357 of the general statutes
40 and section 45a-375 of the general statutes, the failure of a person,
41 acting on behalf of a child who alleges to be a beneficiary of a decedent
42 entitled to property under section 1 of this act, to present his or her
43 claim to the fiduciary as prescribed by law, shall not impair such
44 person's right to maintain an action against the beneficiaries under
45 section 45a-368 of the general statutes; provided nothing contained in
46 this section shall extend the time limit for the commencement of an
47 action to enforce such person's claim.

48 (b) Following the final payment or distribution of all assets known
49 to a fiduciary, any action on an unsatisfied obligation described in
50 subsection (a) of section 45a-368 of the general statutes shall be

51 brought against beneficiaries and not against the fiduciary, unless the
52 plaintiff is seeking to have the fiduciary personally surcharged.

53 Sec. 5. Subsection (a) of section 45a-257b of the general statutes is
54 repealed and the following is substituted in lieu thereof (*Effective*
55 *October 1, 2013*):

56 (a) Except as provided in subsection (b) of this section, if a testator
57 fails to provide in the testator's will for any of the testator's children
58 born or adopted after the execution of the will, including any child
59 who is born as a result of artificial insemination to which the testator
60 has consented in accordance with subsection (b) of section 45a-772 and
61 any child born after the death of the testator as provided in subsection
62 (a) of section 1 of this act, the omitted after-born or after-adopted child
63 receives a share in the estate as follows:

64 (1) If the testator had no child living when the testator executed the
65 will, an omitted after-born or after-adopted child receives a share in
66 the estate equal in value to that which the child would have received
67 had the testator died intestate, unless the will devised or bequeathed
68 all or substantially all of the estate to the other parent of the omitted
69 child and that other parent survives the testator and is entitled to take
70 under the will.

71 (2) If the testator had one or more children living when the testator
72 executed the will, and the will devised or bequeathed property or an
73 interest in property to one or more of the then-living children, an
74 omitted after-born or after-adopted child is entitled to share in the
75 testator's estate as follows:

76 (A) Except as provided in subparagraph (E) of this subdivision, the
77 portion of the testator's estate in which the omitted after-born or after-
78 adopted child is entitled to share is limited to devises and legacies
79 made to the testator's then-living children under the will.

80 (B) The omitted after-born or after-adopted child is entitled to
81 receive the share of the testator's estate, as limited in subparagraph (A)

82 of this subdivision, that the child would have received had the testator
83 included all omitted after-born and after-adopted children with the
84 children to whom devises and legacies were made under the will and
85 had given an equal share of the estate to each child.

86 (C) To the extent feasible, the interest granted an omitted after-born
87 or after-adopted child under this section must be of the same character,
88 whether equitable or legal, present or future, as that devised or
89 bequeathed to the testator's then-living children under the will.

90 (D) In satisfying a share provided by this subdivision, devises and
91 legacies to the testator's children who were living when the will was
92 executed abate ratably. In the abatement of the devises and legacies of
93 the then-living children, to the maximum extent possible the character
94 of the testamentary plan adopted by the testator shall be preserved.

95 (E) If it appears from the will that the intention of the testator was to
96 make a limited provision which specifically applied only to the
97 testator's living children at the time the will was executed, the after-
98 born or after-adopted child succeeds to the portion of such testator's
99 estate as would have passed to such child had the testator died
100 intestate.

101 Sec. 6. Subsection (a) of section 45a-438 of the general statutes is
102 repealed and the following is substituted in lieu thereof (*Effective*
103 *October 1, 2013*):

104 (a) After distribution has been made of the intestate estate to the
105 surviving spouse in accordance with section 45a-437, all the residue of
106 the real and personal estate shall be distributed in equal proportions,
107 according to its value at the time of distribution, among the children,
108 including children born after the death of the decedent, as provided in
109 subsection (a) of section 1 of this act, and the legal representatives of
110 any of them who may be dead, except that children or other
111 descendants who receive estate by advancement of the intestate in the
112 intestate's lifetime shall themselves or their representatives have only

113 so much of the estate as will, together with such advancement, make
 114 their share equal to what they would have been entitled to receive had
 115 no such advancement been made.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	45a-341(a)(1)
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	45a-257b(a)
Sec. 6	<i>October 1, 2013</i>	45a-438(a)

Statement of Legislative Commissioners:

In section 1(a)(1)(B), "in the event of the death of the other spouse" was changed to "in the event of his or her death" for clarity. In section 2(a)(1), "supplied" was changed to "provided" for consistency and "in compliance with" was changed to "pursuant to" for clarity. In section 3, technical grammatical changes were made for conciseness. In section 4(b), "Following final distribution of all assets known to a fiduciary, any suit" was changed to "Following the final payment or distribution of all assets known to a fiduciary, any action" for conformity with section 3 of this act.

JUD *Joint Favorable Subst. -LCO*